

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD S. CROSS and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, La.

*Docket No. 97-2489; Submitted on the Record;
Issued June 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty, causally related to factors of his federal employment.

Appellant, a 32-year-old letter carrier, stopped work on April 15, 1995 and thereafter submitted a notice of occupational disease alleging that he developed depression, anxiety, and right carpal tunnel syndrome in the performance of duty.¹

By letter dated August 30, 1995, the Office requested further information including a description of the implicated employment factors and a medical opinion supporting causal relation.

On August 18, 1995 the Office received a package of evidence including statements, employing establishment forms, Veterans Administration forms and medical evidence. Appellant submitted a June 1, 1993 letter of warning for failure to safely perform his duties,² a July 21, 1993 letter of warning for failure to perform his duties satisfactorily, resulting in delayed mail, a January 14, 1994 letter or warning for failure to perform duties in a safe manner, a March 9, 1994 letter of suspension for failure to perform his duties in a satisfactory manner³ and a March 24, 1995 notice of proposed removal for unsatisfactory work performance -- unsafe act.⁴ Appellant, thereafter filed a grievance, which resulted in appellant being allowed to retrain

¹ The Form CA-2 was dated July 6, 1993 but was received by the Office on July 20, 1995.

² Reduced to an official discussion provided no further safety violations occurred within a year, except that appellant was suspended on February 9, 1994 for a safety violation.

³ The employing establishment also noted that there had been a three-day suspension on February 10, 1994 for failure to safely perform duties.

⁴ Appellant caused a vehicular accident on March 6, 1995 while on duty driving an employing establishment vehicle.

for a position as an letter sorting machine clerk.⁵ Appellant, however, thereafter failed to complete the retraining, and requested that the agreement be reconsidered due to his physical condition. Appellant provided a general statement in which he alleged that in March 1993 his supervisor's attitude towards him drastically changed, that thereafter he was called into the supervisor's office where he was advised that the supervisor was going to do everything he could to get appellant removed, that he was harassed and put down, that the supervisor's attitude worsened in 1994 and continued into 1995, and which caused him stress. Specific employment incidents were also noted: on March 10 and April 9, 1993 appellant's supervisor denied his requests for leave; on April 28, 1993 the supervisor told appellant to punch out and go home; on April 29, 1993 the supervisor spoke harshly to appellant and "harassed" appellant to be in on time; on May 25, 1993 the supervisor accused appellant of trying to make businesses call in to the employing establishment to complain; on May 22, 1993 appellant's supervisor denied him leave; on May 27, 1993 when he was an hour late the supervisor advised him that disciplinary action was being contemplated; on June 1, 1993 the supervisor "fussed" at him saying he should have done more; on July 1, 1993 appellant had an official discussion with the supervisor but was denied union representation; on July 8, 1993 the supervisor gave appellant instructions but then changed his mind; on July 27, 1993 the supervisor spoke sarcastically to appellant; on August 31, 1993 the supervisor was angry at appellant for not delivering all the mail and told him that he should have called the employing establishment; on September 1, 1993 the supervisor was gruff during an official discussion; and on September 22, 1993 the supervisor was "haughty" about granting appellant leave.

Appellant further alleged that on March 23, 1995 he was given a notice of removal and asked to clear out his locker, but was denied permission to speak to his union representative, and he alleged that his postal license was revoked and that management was very cold to him; and that on April 6, 1995 when he signed a document for another job he was told not to wear a Harley-Davidson T-shirt. On April 15, 1995 as he was casing mail appellant was unable to cope with the supervisor's behavior and his inability to function as an letter sorting machine clerk, and broke down and was unable to resume work. Appellant alleged that he developed depression and anxiety caused entirely by management's treatment over two years and never experienced a similar condition.⁶

In support of his claim, appellant submitted a witness statement from John Blakemore, a union representative, which provided: "It is my personal opinion that [appellant] was intimidated, harassed and treated unfairly at times.... I have also overheard conversations by

⁵ The employing establishment noted that appellant had filed multiple grievances regarding various administrative disciplinary actions and training on February 1 and 8, and on March 21, 1994 and on March 28 and April 6, 1995.

⁶ The Board notes that the medical evidence of record supports that appellant had had problems with cocaine abuse two years earlier which required participation in a rehabilitation program, that psychological testing during the Chemical Dependency Outpatient Program revealed drug dependency and a personality disorder trait, that he had been on an effective dose of medication for depression for some time before he took the psychological tests, and that appellant's conflicts with his supervisor were exacerbated by his depression and personality traits. A past history of emotional condition problems during military service was noted with the VA prescribing Paxil for depression.

management concerning [appellant] that were very unprofessional and in one case even profane.” However, no specifics were provided. The union steward provided a statement indicating that he advised appellant to cut his hair and shave his beard. Appellant’s mother also provided a statement about calling in sick for appellant, and having the supervisor not voice any concern for her son’s well-being or state of mind.

Appellant’s supervisor provided a statement explaining his reasons for denying leave due to inadequate manning, and noting that many of the incidents mentioned by appellant could not be recalled. He disputed the accuracy of many of appellant’s allegations regarding who was present, whether a break was taken, who got off early, and when annual leave was taken as demonstrated by reviewing time cards. The supervisor denied making the statements or giving the responses attributed to him by appellant during official discussions. The supervisor indicated that a union steward need not be present during official discussions, that appellant was given multiple chances, and that appellant’s statements regarding mail volume did not agree with the employing establishment records. The supervisor stated that appellant was treated the same as other employees, that appellant was spoken to in a professional and courteous manner, and that appellant was not threatened. The supervisor stated that after being removed, appellant was asked to leave the premises and not to talk with other ex-coworkers in an employees-only area, and that carriers only wore T-shirts with employing establishment logos.

The employing establishment also provided statements regarding accommodations given appellant and the incidents of punishment when he failed to perform as expected or required. It controverted appellant’s claim, noting his preexisting history of emotional illness during military service and current outside sources of stress, and arguing that his “fear of losing his job” was not compensable.

By decision dated July 22, 1996, the Office rejected appellant’s claim finding that he failed to establish that he sustained an emotional illness in the performance of duty. The Office found as factual that the leave denials, the denial of union representation and the notice of removal did occur but that they were not compensable factors of employment, as no error or abuse in these administrative actions was demonstrated, and that the allegations of harassment by the supervisor on April 28 and 29, May 25 and 27, June 1, July 8 and 27, August 31 and September 1 and 22, 1993 were not accepted as factual as they were not supported by evidence of record as having occurred.

The Board finds that appellant has failed to establish that he sustained an emotional condition and right carpal tunnel syndrome in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was

To establish appellant's occupational disease claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.⁸ Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁹

Noncompensable factors of

¹¹ *Id.*

employment include administrative and personnel actions, which are matters not considered to be “in the performance of duty.”¹²

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship, and which working conditions are not deemed factors of employment and may not be considered.¹³ When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹⁴ When the matter asserted is a compensable factor of employment, and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹⁵ If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant’s emotional condition, then the medical evidence of record need not be considered.

In this case, appellant did not allege that he developed an emotional condition arising out of his regular or specially assigned duties, or out of specific requirements imposed by his employment. He alleged, in large part, that his condition was caused by supervisory harassment. The Board has held that actions of an employee’s supervisor which the employee characterizes as harassment may constitute factors of employment giving rise to coverage under the Act.¹⁶ However, in order for harassment to give rise to a compensable disability under the Act, there must be some evidence that such harassment did in fact occur. Mere perceptions of harassment alone are not compensable under the Act.¹⁷ The Board finds that appellant has failed to submit

¹² See *Joseph Dedenato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987). Many of appellant’s allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel action. The Board held that an employee’s emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include the letters of warning, the denial of union representation, and the notice of removal. Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions, and therefore they are not compensable now under the Act.

¹³ See *Barbara Bush*, 38 ECAB 710 (1987).

¹⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹⁵ See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

¹⁶ *Sylvester Blaze*, 42 ECAB 654 (1991).

¹⁷ *Ruthie M. Evans*, *spura* note 14.

any specific, reliable, probative and substantial evidence in support of his allegations. Appellant has the burden of establishing a factual basis for his allegations, however, the allegations in question are not supported by specific, reliable, probative and substantial evidence and have been refuted by statements from appellant's employer. Accordingly, the Board finds that these allegations cannot be considered to be compensable factors of employment since appellant has not established a factual basis for them.

Therefore, in the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.¹⁸

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹⁸ The Office did not adjudicate appellant's claim for carpal tunnel syndrome, and hence it is not now before the Board on this appeal.